IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11064 of 1993
with
CIVIL APPLICATION No. 9167 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PANCHMAHAL JILLA GRAM VIKASH KELAVANI MANDAL
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 11064 of 1993
MR RR VAKIL for Petitioner No. 1
MR MK PATEL, AGP for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 20/12/2002

COMMON ORAL JUDGEMENT

Rule. Mr MK Patel, learned AGP waives service of Rule for the respondent.

2. What is challenged in this petition under Article 226 of the Constitution is the order dated 4.10.1993 (Annexure "D") passed by the State Government in the Education Department cancelling the registration granted in favour of the petitioner-trust for running a secondary school at village Bhatwada, Taluka Devgadhbaria which is now in Dahod District.

3. The petitioner-trust has been established for imparting education in the tribal area which was previously in Panchmahals District and now in Dahod District. The petitioner-trust applied to the Gujarat Secondary Education Board for registration of a secondary school. Initially on 1.4.1991 the Board rejected the said application and, therefore, the petitioner preferred an appeal before the State Government under Section 31(10) of the Gujarat Secondary Education Act, 1972, which appeal was dismissed. However, thereafter the State Government reviewed and reconsidered the matter and by order dated 14.8.1991 directed the Board to grant recognition in favour of the petitioner-trust for running a secondary school with effect from June, 1990. Subsequently by order dated 20.2.1992, the State Government cancelled that registration and, therefore, the petitioner preferred Special Civil Application No. 1418 of 1992 which came to be allowed by this Court on the ground that the impugned order was passed without giving the petitioner an opportunity of being heard. The hearing was fixed on 6.7.1993. None appeared at the said hearing on 6.7.1993 and ultimately by the impugned order dated 4.10.1993 (Annexure "D"), the State Government in the Education Department decided to cancel the registration and reiterated the previous decision dated 20.2.1992. It is the said order which is under challenge in this petition.

4. The learned counsel for the petitioner has challenged the impugned order on the following grounds :-

(i) Earlier the State Government had mentioned in the order dated 20.2.1992 that the registration was required to be cancelled because there was no need for having another school in a small village and there would be possibility of unhealthy competition with the existing Government school whereas the second order dated 4.10.1993 is passed on different grounds altogether which shows that the respondents have passed the order without application of mind. It is mentioned in the impugned order that looking to the number of primary schools in the village, only one

secondary school is sufficient and that is the Government secondary school; the petitioner-institution does not have its own school building or other facilities; the school has not made appointment of teachers according to the Government rules and regulations. The teachers appointed by the petitioner do not possess prescribed qualification and that at the March, 1993 examination, 11 students of the petitioner-institution had appeared at the SSC (10th std.) examination out of whom only three students had passed. Hence, the results are very poor.

(ii) The respondents had not issued any show cause notice setting out any such allegations and, therefore, the petitioner did not have reasonable opportunity of meeting with the case of the respondents. In fact, the trustees of the petitioner-trust themselves were not in a position to remain present at the hearing and, therefore, they had deputed the principal of another school and that by itself cannot be a ground for cancelling the registration.

(iii) The other secondary school in the same village was granted registration after the petitioner was granted registration and, therefore, the possibility of competition with the said school cannot be held out as a ground for denying or cancelling the registration to the petitioner.

(iv) The petitioner-institution does have its own building for running the school and the petitioner is prepared to produce all the plans and other documents in support of the said submission.

(v) The allegation about appointment of teachers in the petitioner's school in violation of the Government guidelines and rules is also not correct, as the petitioner management had given advertisement before making such appointments.

5. On the other hand, Mr MK Patel, learned AGP for the respondents has opposed the petition and submitted that the authorities have given cogent reasons for cancelling the registration and no interference of this Court is called for with the said order. Even the results of the school are disappointing. Out of the eleven students who appeared at the SSC examination in

March, 1993, only three students had passed and, therefore also, the school with such dismal performance is not required to be granted the benefit of registration.

6. Having heard the learned counsel for the parties, it appears to the Court that after the impugned order was passed on 4.10.1993, the same was served upon the petitioner-trust and the present petition came to be filed in October, 1993. This Court was pleased to grant ad-interim injunction in favour of the petitioner-trust with the result that the petitioner has continued to run the secondary school in question. A period of more than nine years have elapsed since the impugned decision was taken in October, 1993. Hence, on the basis of the said order, the school may not be permitted or required to be closed. It also appears to the Court that whatever may be the situation at the relevant time in the year 1992-93 when the State Government had earlier passed orders rejecting the petitioner's registration on the ground of unhealthy competition, inadequate infrastructure and inadequate building, with the passage of last nine years the situation cannot be expected to remain the same.

7. As regards the submission that there is already an existing secondary school in the village and, therefore, there was no need for establishing the petitioner's school, it is required to be noted that the petitioner-institution has been running the school in question for the last 10 years. If there has been any unhealthy competition, the managements of the both the petitioner school and the Government school can certainly point out the relevant facts before the authorities. Assuming that the DEO had no jurisdiction to pass such order in the year 1993, the fact remains that under the interim injunction granted by this Court, the petitioner-institution has continued to run the school for the last 10 years and, therefore, the school cannot be required to be closed down on the basis of the reasons which were given by the Government on 4.10.1993, but considering the fact that the petitioner-school has been running its classes for 8th, 90th and 10th standards for the last more than 10 years and the Government cannot claim monopoly in running the secondary schools, and considering the apprehension raised by the petitioner against respondent No.5 taking over the school with all relevant records, and for deciding the question whether the petitioner-institution does or does not have the school with necessary infrastructure facilities, the authorities will inspect the premises and take an appropriate decision after taking into consideration the

existing position. Similarly the objection that the petitioner-institution does not have a school building of its own may also not survive if the petitioner-institution has already acquired or constructed adequate premises for running the schools. Similarly, whether the teachers are qualified and eligible as per the Government rules and regulations, this is also a matter which can be looked into and the conditions for registration will, therefore, not cause any prejudice or loss to anyone as the authorities will have to examine the school claim afresh and to take a fresh decision whether the registration is required to be cancelled or not.

As regards a very few number of students passing at the SSC examination, this is also a matter which needs to be looked into with reference to the results in the last few years.

8. In view of the above discussion, the impugned order dated 4.10.1993 at Annexure "D" is quashed and set aside with a direction to the respondents to take appropriate action in accordance with law after giving the petitioner-institution full opportunity of being heard.

9. The petition is accordingly allowed in the terms of the aforesaid directions. Rule is made absolute to the aforesaid extent with no order as to costs.

10. Civil Application No. 9167 of 2002 is filed on the basis that the recognition granted in favour of the petitioner-school was cancelled and, therefore, it is prayed that the opponents may be directed to accept the examination forms of 29 students of 10th standard who are studying in the petitioner-institution for appearing at the SSC examinations to be held in March-April, 2003 by the Gujarat Secondary Education Board through Prakash High School.

Since the impugned order dated 4.10.1993 is quashed and set aside, this application is required to be disposed of by directing the Secretary, Gujarat Secondary Education Board to consider the question regarding continuation or cancellation of registration in accordance with law and in light of the above observations and the petitioner-institution shall be treated to have continued to have the registration for running a secondary school and the competent authority shall examine the matter afresh in light of the developments which have taken place in the last about 10

years.

Since cancellation of registration has not been permitted to be effective all these years and the school has been running in the meantime, it would be in the fitness of things to direct the Board to accept the examination forms of the students studying in the 10th std. in the petitioner school.

The Civil Application is accordingly disposed of in terms of the aforesaid direction.

(M.S. Shah, J.)
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